

LCQ3: Administration of estate of late Mrs Nina Wang

Following is a question by Dr the Hon Priscilla Leung and a reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (December 16):

Question:

The Court of Final Appeal handed down a judgment on May 18, 2015, which held that the Chinachem Charitable Foundation (the Foundation) was to hold the estate of the late Mrs Nina Wang (the estate) as a trustee, rather than receiving the estate as an unconditional absolute gift; moreover, the Secretary for Justice (SJ) and the Foundation's Board of Governors were required to formulate an administration scheme for the estate, including the establishment of a supervisory managing organisation, to ensure that the estate would be used for charitable purposes in accordance with the testamentary intention of Mrs Wang. Nevertheless, it has been over five years since the judgment was handed down, but the supervisory managing organisation has yet to be established and the estate is still under the administration of the interim administrators of the estate appointed by the Court (the administrators). It has been reported that the administrators collect from the estate a fee as high as \$60 million per annum. In this connection, will the Government inform this Council:

(1) whether it knows the total current value of the estate, the total amount of fees charged by the administrators and relevant parties since 2012, as well as the amount appropriated from the estate for charitable purposes in each of the past three years;

(2) how SJ, as the protector of charities, monitors if the expenses for the estate are reasonable and necessary, so as to ensure that the estate will not be gnawed by the exorbitant management fees, thus causing a significant reduction in its resources that may be used for charitable purposes; and

(3) whether SJ will request the Foundation to expedite its handling of the matters relating to the establishment of the supervisory managing organisation, so that the estate may expeditiously be used for charitable purposes, including helping members of the public affected by the epidemic?

Reply:

President,

In relation to the estate of the late Mrs Nina Wang (Estate), I provided a detailed written response to a relevant question at the Legislative Council on May 29, 2019 about the latest developments regarding the scheme of administration (Scheme) and the work of the interim administrators. The Secretary for Justice (SJ), as the protector of charities, is necessarily a party to charity proceedings and represents the beneficial interest or objects of the charity. The relevant legal proceedings could be taken forward in a reasonable time only with the co-operation of all parties, but not just SJ as necessarily a party to charity proceedings, and their active follow-up with the Court's directions and orders.

The role of SJ is to protect charitable interests but charities are generally allowed to operate autonomously under their own governing articles and in accordance with their own rules or regulations. Except otherwise prescribed by law or ordered by the Court, the charity may operate autonomously and decide the manner in which the public is to be informed about its operation. SJ does not participate in a charity's decision and arrangement to make donations to others for charitable purposes, and has no power to direct any charity to make donations.

In relation to Dr the Hon Priscilla Leung's questions, I now reply as follows:

(1) and (2) The Department of Justice (DoJ) has all along been paying close attention to the interim administrators' work in managing and preserving the Estate, and take such follow-up actions as may be appropriate.

In relation to the information about the Estate, the DoJ has sought updates from the parties concerned. With their consent, information which can be disclosed is set out below:

The core assets of the Estate comprise the assets of the companies in the Chinachem Group. Based on the relevant unaudited combined management accounts, as at September 30, 2020, the Chinachem Group has a net asset value of about HK\$141 billion. According to the judgment of the Court of Final Appeal dated May 18, 2015 (CFA judgment), the Chinachem Group was valued in 2012 at over HK\$82 billion.

On the other hand, during the period from 2018 to 2020 (up till November 30, 2020), the Chinachem Group has in each year made donations for charitable purposes to different charities and other entities at the aggregate sum of over HK\$26.6 million. During the aforesaid period, the annual donations made were about HK\$5.5 million, HK\$11.65 million and HK\$9.45 million respectively.

The fees of the interim administrators have been prescribed by the Court in the Appointment Order and are subject to the Court's scrutiny. As the relevant order was made at a hearing not open to public, without the Court's order for disclosure, we are not in a position to disclose such information. The DoJ will continue to follow up as appropriate so as to ensure that the interim administrators' fees are maintained at a reasonable level.

(3) As stated in my preamble, although SJ, as the protector of charities, is necessarily a party to charity proceedings and represents the beneficial interest or objects of the charity, except otherwise prescribed by law or ordered by the Court, charities are generally allowed to operate autonomously under their own governing articles and in accordance with their own rules or regulations, and decide the manner in which the public is to be informed about its operation. Hence, even when the Court has approved the Scheme and appointed members to the supervising managing organisation, SJ has no power to direct the Chinachem Charitable Foundation Limited (Foundation) or the Chinachem Group to make donations for charitable purposes, including providing assistance to citizens affected by the epidemic.

The DoJ has been actively following up the blueprint of the Scheme as laid down in the CFA Judgment on May 18, 2015, and has provided recommendations therein. The DoJ has been in contact with the Foundation's responsible persons to discuss the detailed arrangements of the Scheme, with a view to completing the relevant tasks as soon as possible. The DoJ had made an application to the Court on March 29, 2019 in respect of the relevant matters in order to seek the Court's determination or directions for the DoJ to proceed to complete the remaining tasks. The Court held the first directions hearing on June 13, 2019. The Foundation, being one of the parties to the proceedings, was directed to file its affirmation by October 31 of the same year. As a result of the Foundation's failure to file the relevant affirmation after a few extensions of deadline, the DoJ made an application to the Court on May 6, 2020, requesting the Foundation to file its affirmation. At another hearing on May 26, 2020, the Court ordered that unless the Foundation could file an affirmation within 56 days, it would be debarred from filing evidence so that the proceedings could continue to progress.

The Foundation eventually filed its affirmation on July 17, 2020. The interim administrators filed their relevant affirmations on December 7, 2020 after a few extensions of deadline. At present, the next step is for the Foundation to file its affirmation(s) in reply. After the Foundation's filing of its affirmation(s) in reply, the DoJ shall file its affirmation(s) in reply. Upon the completion of evidence, the Court will hold another directions hearing on May 26, 2021.

I must point out that the DoJ has all along been acting expeditiously in the relevant legal proceedings. The DoJ will continue to closely follow up in order to ensure the early preparation and implementation of the Scheme, and to handle the Estate in accordance with the wishes of the late Mrs Nina Wang.

We will also actively follow up the detailed arrangements for the implementation of the will, including handling the court proceedings already commenced and closely monitoring the management and preservation of the Estate with a view to protecting and safeguarding the relevant charitable interest. Thank you, President.

Ends/Wednesday, December 16, 2020